enlargement of time, the plaintiff's claim would be barred. Mr. Murphy argued that considerations such as this were wholly inapplicable by virtue of the provisions of the Second Schedule of the Courts Ordinance, 1948. He does not as I understand it, argue that the Court has no discretion in the matter. If the Court has a discretion and Mr. Murphy is right then what considerations should weigh with the Court in exercising that discretion ?

I cannot think that the intention and effect of the Second Schedule, any more than that of section 151 of the Indian Civil Procedure Code, is to give the Court power to make an order directly negativing a statutory provision. It seems to me that if the Second Schedule does confer any powers then the exercise of such powers does not extend to making orders in direct contradiction of the provisions of other statutes. It seems to me that if the word "jurisdiction" in the Second Schedule is interpreted as meaning "the conferring of power to take cognisance of the laws in force in an area or district" the meaning of the Second Schedule is clear and no difficulties arise.

That being the case I agree with the Order of the learned Judge and would dismiss this Appeal with costs here and in the Court below.

Appeal dismissed.

Solicitors: *Murphy, Dunbar & Chung*; *Maxwell, Kenion, Cowdy & Jones.*

PUBLIC PROSECUTOR v. PHANG SWEE LAN

[A. Cr. J. (Adams J.) November 5, 1959]

[K. L. — Criminal Appeal No. 58 of 1959]

Local Authority — Building operations by unlawful occupier of state land without approval of Municipal Councillors — Demolition notice on whom to be served — Municipal Ordinance (S.S.Cap.133), Part VIII, ss.143, 144 (1), (7), (10), (12) and 144(B) — Construction of s.144(12): "they shall be deemed to have been commenced ...by the owner of the land" — Intention of legislature.

In this case the respondent had erected a wooden house on State land within the Municipality of Kuala Lumpur which she occupied unlawfully, and the house was built without the approval of the Municipal Councillors. A demolition notice was served on her requiring her to demolish the building or to submit appropriate plans but she failed to comply therewith. A summons was issued against her and when the matter came before the Magistrate she was acquitted and the Magistrate refused to make any mandatory order, following *Lim Beng Teck* v. *R.* (1). The Prosecution appealed.

Held: though the words of section 144(12) are unequivocal, it does not mean that the owner of the land was necessarily in fact the person who commenced the building operations. It is "a statutory fiction" and what the Legislature meant was that the owner of the land should be made responsible where building operations have been commenced contrary to the provisions of section 144(7), but the Legislature did not mean to make him solely responsible and to prevent the action being taken against the actual offender when the proper authorities know who he is.

Lim Beng Teck v. *R.* (1) dissented from.

Cases referred to:—

(1) *Lim Beng Teck* v. *R.* [1957] M.L.J. 21.
(2) *Warburton* v. *Loveland* (1831), 2 D. & Cl. 489.
(3) *Ex parte Walton* (1881), 17 Ch.D. 746.
(4) *Hooi Chuk Kwong* v. *Lim Sow Choo* [1958] M.L.J. 5.
(5) *Thong Peng Hong* v. *Public Prosecutor* [1955] M.L.J. 232.

MAGISTRATE'S CRIMINAL APPEAL.

Peter Hall (on a *fiat* from the Public Prosecutor) for the appellant.

G. K. M. Mohan for the respondent.

Cur. Adv. Vult.

Adams J.: This is an appeal by the Public Prosecutor against the order of the learned Magistrate, Kuala Lumpur, dismissing the summons brought against the respondent under section 144 of the Municipal Ordinance of the Straits Settlements as applied to the Malay States by virtue of the Municipal (Extended Application) Ordinance (No. 3 of 1948). I shall hereinafter refer to the Municipal Ordinance of the Straits Settlements as "The Ordinance".

The facts of the case are not in dispute. Some time during September, 1958 the respondent erected a wooden house 21 ft. x 20 ft. on a piece of land within the boundaries of the Municipality of Kuala Lumpur. The owner of this piece of land is the State Government and the respondent is on the land unlawfully without licence or title from the State Government. The respondent at no time gave the Municipal Councillors notice of her intention to commence building operations nor did she submit any plan and specification of the building to the Municipal Councillors, who, therefore, were unable to approve any plan in accordance with the provisions of section 144(7) of the Ordinance. A notice was served upon the respondent who was the owner of the premises within the meaning of section 3 of the Ordinance on the 9th July, 1959. This notice required her to demolish the building or to submit appropriate plans within 14 days, on pain of legal proceedings being taken against her if she failed to comply therewith. The respondent acknowledged receipt of the notice to the Notice Server but failed to comply with it. The Municipal authorities then proceeded to apply for a summons in the Magistrate's Court under section 144(10) which makes any person contravening sub-section 7 liable, *inter alia*, to a fine of $500. The Court is also given power thereby to make a mandatory order requiring such person to alter in any way or to demolish the building. The summons was duly issued and the matter came up for trial. The Magistrate acquitted the respondent on the 16th July, 1959 and refused to make any mandatory order. The learned Magistrate in a very careful judgment decided that he should follow the judgment of Whyatt C.J. in *Lim Beng Teck* v. *Reg.*(1) which is precisely on the main ground of appeal in this case. He also refused to accept the argument put forward by the Prosecutor that sub-section 12 of section 144 in any event only

applies where building operations are commenced with respect to buildings already in existence. This interpretation is suggested by the late Mr. D. K. Walters in his *Annotation of the Municipal Ordinance* at page 219.

The Public Prosecutor appealed. There were originally three grounds of appeal but Mr. Peter Hall, who appeared on a *fiat* from the Public Prosecutor, only proceeded on the 1st and 2nd grounds which may be shortly summarized as follows:—

(a) the learned Magistrate should have held that, although the owner of the land in question shall be deemed to have commenced the building operations in question, the respondent had actually commenced such building operations and was therefore liable to be prosecuted under section 144 of the Ordinance.

(b) the learned Magistrate erred in holding that section 144(12) of the Ordinance was applicable to this case; the learned Magistrate should have held that the said sub-section was not applicable in this case because the said sub-section only applies in the case of building operations commenced or carried out in respect of existing buildings.

For reasons which will appear later it will not be necessary for me to consider this second ground of appeal.

Mr. Peter Hall argued that sub-section 12 is a presumption, and the presumption merely affects the onus of proof. He argued that the learned Chief Justice of Singapore was wrong and urged that there is no reason why the law should not provide for two punishments to be imposed on two persons for one offence. He cited the Companies Ordinance 1940 - 1946 as an example. He pointed out that under that Ordinance both the Directors and the Company could be prosecuted in certain cases. He also pointed out that if the learned Chief Justice's interpretation of sub-section 12 is correct there would be no need to use the words "no person" in sub-section 7 or "any person" in sub-section 10.

Mr. G. K. Mohan in reply argued that sub-section 12 is not a presumption but an absolute statement of fact which cannot be rebutted. He pointed out that section 144(B) makes the owner of the land responsible, on the written request of the Municipal Councillors, for submitting plans in cases where a building has been erected without the submission of plans as required by section 144(1), and that it would appear therefrom that the legislature intended to saddle the owner of the land with the sole responsibility of seeing that section 144 was complied with. He also argued that there are no clear words in sub-section 12 to create a several liability, and therefore that the responsibility is placed fairly and squarely on the land owner by the words "and he shall be liable therefor".

Before considering the effect of sub-section 12, it will be as well to bear in mind the purpose for which Part VIII of the Ordinance was enacted. This part refers to the control of streets, sewerage and buildings and lays down the regulations governing their construction and use. This part of the Ordinance therefore was enacted in the interests of the general health of the public who reside within the Municipal boundaries, and the penal provisions found in Part VIII provide the necessary sanctions, having in mind local conditions, to further those interests.

Sections 143 to section 147 deal specifically with buildings. The main provisions governing buildings are contained in section 144. By that section, every person is required to submit plans and specifications of any intended building. The Councillors are given wide powers for directing the person submitting the plans to alter them to comply with Municipal specifications and sub-section 7 prohibits any person from commencing any building operations involving erection of a building unless:—

(a) He has given to the Commissioners 4 days' notice of his intention to commence or resume such operations with particulars of the intended work; and

(b) A plan and specification of the building have been approved by the Commissioners within one year before the date of the notice.

The penalty for not doing so is contained in sub-section 10 which appears to render every person who, *inter alia*, commences or resumes building operations in contravention of sub-section 7 liable to the penalties set out in that sub-section. But sub-section 12 provides that where any building operation is commenced or carried out in respect of any building it shall be deemed to have been commenced or carried out by the owner of the land whereon such building is erected. I am asked to say, reading section 144 as a whole, that this sub-section precludes the Municipal authorities from proceeding against the actual person who has failed to comply with section 144(7) and that this was the intention of the legislature.

I do not agree with such an interpretation. In the first place this is not consistent with normal criminal practice. A crime may be defined as an unlawful act or default which is an offence against the public and renders the person guilty of the act or default liable to punishment. In the second place such an interpretation is not necessary or desirable for the purpose for which this part of the Ordinance was enacted. The owner of the land may be just as difficult to find in order to serve him with process as the actual person who fails to comply with the provisions of section 144(7). Section 144(7) quite clearly states that no person shall commence any building operations unless he has complied with the provisions of that sub-section. Sub-section 10 provides that any person who, *inter alia*, commences building operations in contravention of sub-section 7 shall be liable to a fine, etc. These words are perfectly plain and the effect of them is consistent with normal criminal practice, namely that the actual offender shall be the person to be punished, for his wrongful default. In my view sub-section 12 has merely been added in the interests of public health bearing in mind particular difficulties experienced in this country in some cases of finding the actual offender to enable the Municipal Authorities to prosecute the owner of the land in cases where the actual offender cannot be found.

In interpreting the effect of sub-section 12, it is necessary to consider the whole of section 144. As was said in *Warburton* v. *Loveland*[2]:

"No rule of construction can require that when the words of one part of a statute convey a clear meaning it shall be necessary to introduce another part of a statute for the purpose of controlling or diminishing the efficacy of the first part".

I do not think that reading section 144(B) helps the respondent's argument. This section gives power to the Councillors to call upon the owner of the land to submit the plans and specifications required by section 144(1) when they have not been submitted by the person intending to erect the building. This is an additional power added in the interests of public health, but it does not take away the liability of the person erecting a building to submit plans and specifications in the first place.

The objection that this interpretation of section 144 would make two people liable at law for one offence is not in my opinion fatal. As I have said the object of regulating building operations is for the protection of the public. The owner of the land enjoys normally some benefit therefrom and there is no reason why he should not be also responsible for seeing to it that, when buildings are erected on his land, the provisions of section 144 are properly complied with. It is true that words used in sub-section 12 are "they shall be deemed to have been commenced ..... by the owner of the land". But as James L.J. said in *Ex parte Walton*,[3] "when a statute enacts that something shall be deemed to have been done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction should be resorted to". The intention of this statute is, as I have said, to protect the public health and in view of the wording of sub-sections 7 and 10 and the normal principles of criminal responsibility, sub-section 12 was added, in my opinion, as an additional weapon in the Municipal Authorities' armoury to aid them in their battle to protect the public health. It is not meant to exclude proceedings against the actual offender.

The Court of Appeal in *Hooi Chuk Kwong* v. *Lim Sow Choo (f)*[4] has cited with approval a dictum of Thomson J. (as he then was) in *Thong Peng Hong* v. *Public Prosecutor*[5]. In the latter case the learned Judge was dealing with words "shall, until the contrary is proved", "be deemed to have been in possession . . ." which are found in section 37(d) of the Dangerous Drugs Ordinance. In the course of his judgment the learned Judge said:—

"The object of such provisions is not to create new offences. Nor is it to lead to the conviction of innocent persons. It is to ensure that the Courts should draw from certain facts, once they are proved, the inferences that experience has shown a reasonable man would normally draw from such facts."

And he goes on to say:

"But I should emphasize the point that such provisions are in truth statutory directions as to the drawing of inferences. Inferences are matters of reason and it seems to me that if in any particular case such a statutory inference leads to a conclusion which is manifestly unreasonable then it must be held that such a result was not intended by the Legislature and, unless the words of the statute are crystal clear and compelling, any construction which leads to such result must be rejected".

It is true that the Court of Appeal was considering section 105(2) of the Town Boards Enactment and the words "until the contrary is proved" appear in that sub-section, which they do not in sub-section 12 of section 144 of the Ordinance. In the case of sub-section 12 the words are unequivocal. But though the wording is unequivocal, it does not mean that the owner of the land was necessarily in fact the person who commenced the building operations. It is as James L.J. has pointed out "a statutory fiction". The Legislature clearly means that the owner of the land should be made responsible where building operations have been commenced contrary to the provisions of section 144(7). But I do not think the Legislature meant by this to make him solely responsible and to prevent the action being taken against the actual offender when the proper authorities know who he is. I would say that to hold otherwise would be a "conclusion which is manifestly unreasonable", and therefore that the Legislature did not intend such a result. In view of the wording of sub-section 10, I think it is open, and indeed the duty of the prosecution, to proceed against the actual offender when he is known. To hold otherwise would impose an impossible burden upon the owner of the land who may have leased his land on a building lease reserving a peppercorn or nominal rent.

I therefore find myself with regret unable to follow the judgment in the *Lim Beng Teck*[1] case and allow the appeal.

Appeal allowed.

Solicitors: *Shearn Delamore & Co.*; *Cheah Theam Swee & Co.*

SARASWATHY AMMAL & ANOR. v. CENTRAL BANK OF MALAYA LTD.

[A. C. J. (Ong J.) August 24, 1959]

[K. L. — Civil Appeal No. 10 of 1959]

Land laws — Chargor in possession — Property sold by chargee — Rights of chargor — Land Code (Cap.138), ss.138 and 152.

Landlord and Tenant — Tenants at sufferance — Notice to terminate tenancy — Rent free tenants — Claim to be tenants at will.

In this case the appellants are husband and wife, and the latter was since 1942 the registered proprietor of land on which house No. 95 Travers Road stands. In 1952 the property was charged to the respondent Bank, but the appellants remained in possession. As a result of proceedings under section 138 of the Land Code the property was sold at a public auction and it was knocked down to the Bank on February 18, 1956; but the bank was not registered as proprietor until May 22, 1956. On February 22, 1956 the Bank gave 7 days' notice to the appellants to quit and deliver up vacant possession of the premises, but, however, the notices were never served, and no further notices were given. On July 14, 1956 the Bank commenced action and obtained judgment *ex parte* on August 29, 1956. This judgment